

**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

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**Minutes
Board Meeting
Thursday, April 8, and Friday, April 9, 1999**

Meeting Location
Board for Professional Engineers and Land Surveyors
2535 Capitol Oaks Drive
Third Floor Conference Room
Sacramento, California

Thursday, April 8, 1999**1. ROLL CALL TO ESTABLISH QUORUM**

The meeting was called to order by President Powell at 4:15 p.m. Roll call was taken, and a quorum was present.

Board Members Present: Myrna Powell (President), George Shambeck (Vice-President), Vince DiTomaso, Ted Fairfield, Jim Foley, Kathy Hoffman, Andrew Hopwood, Stephen Lazarian, Marilyn Lyon, Millicent Safran, Quang Vu

Board Members Absent: Gregg Brandow, David Chen

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Susan Ruff (Legal Counsel), Kevin A. Schunke (Special Assistant to the Executive Officer), Nancy Eissler (Attorney General Liaison Analyst), Tiffany Criswell (Administrative Technician)

Public Present: None

2. PUBLIC COMMENT

President Powell asked for public comment. There was no public comment.

3. CLOSED SESSION

The Board went into Closed Session.

Mr. Hopwood joined the meeting at 4:30 p.m. during Closed Session.

The meeting was recessed at 5:00 p.m. to be reconvened at 9:00 a.m. on April 9, 1999.

Friday, April 9, 1999

1. ROLL CALL TO ESTABLISH QUORUM

The meeting was called to order by President Powell at 9:00 a.m. Roll call was taken, and a quorum was present.

Board Members Present: Myrna Powell (President), George Shambeck (Vice-President), Gregg Brandow, Vince DiTomaso, Ted Fairfield, Jim Foley, Kathy Hoffman, Andrew Hopwood, Stephen Lazarian, Millicent Safran, Quang Vu

Board Members Absent: David Chen; Marilyn Lyon

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Susan Ruff (Legal Counsel), Kevin A. Schunke (Special Assistant to the Executive Officer), Nancy Eissler (Attorney General Liaison Analyst), Joanne Arnold (Enforcement/Legislative Program Manager), Howard Brunner (Staff Land Surveyor Consultant), Tiffany Criswell (Administrative Technician), Diane Barbosa (Publications Analyst), Jackie Barclay (Administrative Analyst), Debbie Thompson (Budget Analyst), Donna Vaum (Enforcement Analyst), Mariann Fagunes (Enforcement Analyst), Sally Strubinger (Enforcement Analyst), Patricia Canterbury (Assistant Executive Officer), Eileen Crawford (Staff Civil Engineer)

Public Present: Robert H. Hamstra Jr., PATCA; Rich Ray, CLSA; Joyce Hirano, Caltrans; Matt Butler, Center for Public Interest Law (CPIL)

2. PUBLIC COMMENT

Ms. Christenson announced that Ms. Criswell will be handling the duties relating to Board member travel and pay and that Ms. Barclay will be handling the duties relating to coordinating the agendas for Board meetings, arranging the meeting sites, preparing the Board minutes, and will also be overseeing the Applicant Tracking System (ATS).

Ms. Hoffman joined the meeting at 9:05 a.m.

President Powell asked for public comment.

Mr. Zaie addressed the Board regarding the elimination of a question from the October 1998 Engineering Surveying examination.

William Allen addressed the Board regarding disciplinary action which had been taken against him. He believes the Board needs to investigate the actions of the complainants and Board staff relating to his case.

3. CLOSED SESSION

The Board went into Closed Session.

4. OPEN SESSION TO ANNOUNCE RESULTS OF CLOSED SESSION

The Board approved the recommendation of the Enforcement Committee to adopt the proposed stipulation in the matter of Joseph Ozoa.

The Board approved the recommendation of the Enforcement Committee to adopt the proposed stipulation in the matter of Craig Marshall.

The Board approved the recommendation of the Enforcement Committee to non-adopt the proposed decision in the matter of John Kaldawi.

The Board took action on the petition for reconsideration of Ali Ghorbanzadeh.

The Board approved the registration of the candidates who had previously passed the 8-hour section of the examinations. Registration for the candidates was not authorized prior to this date because they had not returned their take-home examinations. Candidates were notified of the deficiency and have since returned and passed their take-home examinations.

The Board discussed examination procedures.

The Board discussed pending litigation as noticed.

5. APPROVAL OF CONSENT ITEMS

MOTION: Mr. Lazarian/Mr. Vu moved to approve the Minutes of the February 25 & 26, 1999; the Three and/or Five Year Delinquents; and the Examination Procedures and Results considered in Closed Session.

VOTE: 11-0, Motion carried.

6. COMITY AND TEMPORARY AUTHORIZATION APPLICATIONS

MOTION: Mr. Fairfield/Mr. Hopwood moved to approve the applicants for registration by Comity as provided on Pages 19-28 of the agenda.

VOTE: 11-0, Motion carried.

7. ENFORCEMENT OUTREACH PRESENTATION, INCLUDING THE COMPLAINT PROCESS

Mariann Fagunes, Enforcement Outreach Coordinator, gave her Outreach Presentation to the Board, specifically focusing on the complaint investigation process.

8. APPROVAL AND ADOPTION OF BOARD RULE 411 (SEAL AND SIGNATURE)

Ms. Eissler presented the information in the agenda. Ms. Eissler explained that any changes to the language as originally noticed would require a 15-day noticed public comment period. She further explained that if any changes are made at today's meeting, the entire package would need to be presented to the Board following the 15-day comment period and that the Board could make further changes at that time. The Board decided to address the comments regarding the seal prior to discussing the comments regarding the signature.

The Board discussed the difficulties in reproducing embossed seals and discussed possible amendments to the language to allow for embossed seals but to ensure that all seals could be reproduced.

MOTION: Ms. Safran/Mr. Hopwood moved to amend the language to read as follows:

"The seal shall be capable of leaving a permanent ink, a reproducible impression, or an electronically-generated representation on the work."

After additional discussion, the motion was amended as follows:

"The seal shall be capable of leaving a permanent ink representation, a reproducible impression, or an electronically-generated representation on the work."

After further discussion, the motion was amended as follows:

"The seal shall be capable of leaving a permanent ink representation, an impression, or an electronically-generated representation on the work. The seal image shall be capable of being reproduced."

FINAL MOTION: Amend the language of proposed subsection (f) of Board Rule 411 to read as follows below. Based on this amendment, staff is directed to notice this new language for a 15-day comment period.

"The seal shall be capable of leaving a permanent ink representation, an impression, or an electronically-generated representation on the work. The seal image shall be capable of being reproduced."

VOTE: 10-1, Motion carried. Mr. DiTomaso voted "nay."

The Board discussed concerns with allowing electronically-generated signatures. Mr. Fairfield indicated that he would not oppose electronically-generated signatures if the professional whose signature is being electronically-generated has the discretion to choose whether or not to use such a signature and could not be required to by a governmental agency or a client. Several Board members expressed their concerns with allowing electronically-generated signature; they do not believe there is sufficient protection for the public with such signatures since the professional does not have to actually look at his

final product when he applies his signature as would be done with a “wet” signature. Ms. Hoffman explained that many different types of businesses are using electronic commerce; she also explained that the encryption programs are designed so that the signature cannot be applied without the required password.

MOTION: Ms. Safran/Mr. Hopwood moved to amend the language as recommended by the California Department of Transportation.

VOTE:

A roll call vote was taken.

Mr. Brandow	Aye
Mr. DiTomaso	Nay
Mr. Fairfield	Nay
Mr. Foley	Aye
Ms. Hoffman	Aye
Mr. Hopwood	Aye
Mr. Lazarian	Nay
Ms. Safran	Aye
Mr. Vu	Nay
Vice President Shambeck	Nay
President Powell	Nay

5-6, Motion failed.

Following the vote on the motion, the Board directed staff to obtain additional information regarding the following items for the June 1999 Board meeting:

1. How is the responsible charge professional protected from any changes being made to the signed plans or other documents without his knowledge, review, and approval?
2. Who enforces Government Code section 16.5 and its accompanying regulations? If possible, have someone from that agency attend the next Board meeting to make a presentation or, at least, provide a written report.

10. ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT FOR 1999/2000

This item was taken out of order.

MOTION: Mr. DiTomaso/Ms. Safran moved to elect George Shambeck as President and Ms. Hoffman as Vice President for 1999/2000.

VOTE: 11-0, Motion carried.

Ms. Safran advised the Board that she and Mr. DiTomaso have developed a contingency plan should Mr. Shambeck not be able to serve out his full term as President due to the end of his term as a Board member. They recommend that should Mr. Shambeck serve less than six months as President, then the Board would elect a professional member to replace him. However, should Mr. Shambeck serve more than six months as President, then Ms. Hoffman would assume the position of President.

15. COMMITTEE REPORTS

c. Examination/Qualifications

This item was taken out of order.

1. Report on the April 8, 1999, Committee Meeting

Mr. DiTomaso reported on the April 8, 1999, Committee Meeting.

2. Various Examination Formats that Could Be Used for the Land Surveyor Examination

Mr. DiTomaso reported that the Committee will continue its discussion of this item at future Committee meetings.

3. Results of the Questionnaire on Engineering Degrees Issued Via the Internet

Mr. DiTomaso reported on the results of the survey.

9. STRATEGIC PLAN

Ms. Canterbury presented the information in the agenda packet. Mr. Shambeck recommended that a new goal/objective be added regarding working with the Geographic Information Systems (GIS) industry to develop a brochure regarding the role of land surveyors in GIS. Mr. Vu indicated that he supports the removal of the item regarding developing a seismic exam for mechanical and electrical engineers but believes that the Board should continue to promote awareness of seismic requirements for mechanical and electrical engineering work. Ms. Christenson suggested that ATS item be changed to "conduct a workload analysis of the ATS Program to determine additional staffing and other needs by February 1, 2000."

MOTION: Mr. Foley/Mr. Shambeck moved to approve the Strategic Plan with the modifications as discussed.

VOTE: 9-0, Motion carried. (Mr. Vu and Mr. Lazarian were not present for the motion or vote.)

11. TECHNICAL ADVISORY COMMITTEE REPORTS

a. Land Surveying

Mr. Shambeck reported that the next meeting will be held on April 16, 1999.

b. Civil/Geotechnical Engineering

Mr. Foley reported that the next meeting will be held in May 1999.

c. Electrical Engineering

1. Report on the March 25, 1999, Joint EE/ME Committee Meeting

Mr. DiTomaso and Mr. Vu reported on the March 25, 1999, Joint EE/ME Committee Meeting.

d. Mechanical Engineering

1. Report on the March 25, 1999, Joint EE/ME Committee Meeting.

Mr. DiTomaso and Mr. Vu reported on the March 25, 1999, Joint EE/ME Committee Meeting.

e. Structural Engineering

1. Report on the March 31, 1999, Committee Meeting and Minutes from December 16, 1998, Committee Meeting

Mr. Brandow reported on the March 31, 1999, meeting.

2. Draft Language of Definition “Periodic Observation” for Board Rule 404(hh)

Mr. Brandow presented the proposed language as developed by the TAC. President Powell directed that the language be provided to the Electrical, Mechanical, Civil, and Geotechnical TACs for their review and comment.

3. Interview Requirements for References for Structural Engineering Applicants

Mr. Brandow reported on the development of guidelines for conducting interviews for references. The TAC is still working on these guidelines.

4. Definition of Temporary and/of Fixed Structures

Mr. Brandow reported that the TAC will be drafting an article for publication in the Board’s newsletter regarding Temporary and Fixed Works. He will present this draft for the Board’s review at a future meeting.

12. LIAISON REPORTS

a. ABET

There was no report.

b. NCEES

Mr. Fairfield reported on his recent activities as the NCEES Western Zone Vice President and up-coming NCEES meetings he will be attending as well as meetings he has recently attended. He reported that the NCEES budget deficit will not be as great as previously anticipated.

NCEES Governance Committee Report (w/Pres Report)

President Powell announced that this item would be discussed with the President’s Report item.

1999 Western Zone Meeting

Mr. Shambeck reported on the status of the 1999 Western Zone meeting. The Board complimented Mr. Schunke on his excellent work planning this meeting.

c. International Relations

Mr. Lazarian distributed the draft International Relations Committee report to the Board.

d. Technical and Professional Societies

Mr. Shambeck reported on his attendance at the National Society of Professional Surveyors Registration Boards Forum on March 15, 1999. Mr. Fairfield reported on his attendance at the American Institute of Chemical Engineers (AIChE) meeting where he participated in a panel discussion regarding the Board and licensing issues.

13. PRESIDENT'S REPORT

12. LIAISON REPORTS

b. NCEES - NCEES Governance Committee Report

The discussion of the President's Report and the Liaison Report were combined.

President Powell reported that some people still seem to have the perception that this Board is too arrogant; however, they are only looking at past actions by former Board members and not at what the current Board is doing. We need to be careful so what we say and do cannot be misconstrued.

President Powell reminded all Board members to submit their outreach reports to the staff so that the reports can be included in the Administrative Committee agenda.

President Powell reminded everyone that Sunset is on the horizon. She advised the Board that it is still unclear whether Sunset hearings will be held this year or whether legislation will be done to extend this year's Sunset dates an additional year.

President Powell reviewed the Governance Committee report and the proposed changes to the NCEES By-laws. She advised that the Board will need to provide direction to its delegates to the 1999 NCEES Annual Meeting which will be held in August 1999. Mr. Fairfield commented that the proposed changes may be modified following the Zone meetings in April and May and prior to the Annual Meeting in August.

14. EXECUTIVE OFFICER'S REPORT

Ms. Christenson advised the Board that some of the applicant counts on the Executive Summary are incorrect due to a glitch in the ATS system. This is being corrected.

Ms. Christenson reported that the new Director of the Department of Consumer Affairs is Kathleen Hamilton and the new Secretary of State and Consumer Services is Eileen Adams.

Ms. Christenson explained that she is recruiting to fill the Systems Administrator position, the EIT/LSIT & Verification position, and Office Services Supervisor position.

Ms. Christenson reminded the Board members to submit any items or articles they would like included in the Spring Bulletin to Diane Barbosa as soon as possible. She informed the Board that the licensee lookup internet project is moving ahead. She also advised the Board that forms such as the Organization Record form can now be completed on-line and then printed and mailed to the Board.

Ms. Christenson advised the Board that the 1999/2000 Board meeting schedule was included in their agenda for reference.

Ms. Christenson reported that the Architects & Engineers Conference Committee of California (AECCC), which meets quarterly, has decided to do outreach about design/build and quality based selection. They have requested that we provide them with any information we have regarding these two issues.

Mr. DiTomaso left the meeting at 2:30 p.m.

15. COMMITTEE REPORTS

a. Enforcement

1. Report on the April 8, 1999, Committee Meeting

Ms. Safran reported on the April 8, 1999, Committee Meeting.

2. Revisions to the Policy of the Board for Professional Engineers and Land Surveyors on Disclosure of Complaints and Disciplinary Actions

Ms. Eissler distributed a handout and explained the modifications shown on the handout. These changes were made based on the discussion at the Enforcement Committee meeting.

MOTION: Ms. Safran/Mr. Hopwood moved to adopt the revised (dated April 1999) Policy of the Board for Professional Engineers and Land Surveyors on Disclosure of Complaints and Disciplinary Actions.

VOTE: 10-0, Motion carried.

3. Delinquent Reinstatement Program and Proposed Amendments to Board Rule 424.5

Ms. Safran advised the Board that the Enforcement Committee voted to recommend that the first two items described in the Action Plan be assigned to the Legislative Committee. Therefore, on behalf of the Enforcement Committee, Ms. Safran requested that President Powell make this assignment. President Powell assigned these two items to the Legislative Committee.

Ms. Eissler distributed a handout with the revised language for the proposed amendments to Board Rule 424.5. She advised that these changes had been made after discussions with the Ms. Ruff based on the discussion at the Enforcement Committee meeting.

MOTION: Ms. Safran/Mr. Hopwood moved to direct staff to begin the rulemaking process to amend Title 16, California Code of Regulations section 424.5 as shown in the handout.

VOTE: 10-0, Motion carried.

4. Citation Program and Proposed Amendments to Board Rules 472-473.4

MOTION: Ms. Safran/Mr. Hopwood moved to direct staff to begin the rulemaking process to amend Title 16, California Code of Regulations sections 472-473.4 as shown in the Enforcement Committee agenda, with any minor, non-substantive changes as the Board's Liaison Deputy Attorney General and Legal Counsel recommend.

VOTE: 10-0, Motion carried.

5. Fingerprint/Criminal Records Check Program

Ms. Safran reported that the Enforcement Committee has directed staff to continue researching the Fingerprint/Criminal Records Check Program and report back to the Committee with further information and recommendations.

6. Approval of Process to Adopt Regulations as required by Business and Professions Code section 138 Regarding Posting Notice of Licensure

Ms. Safran reported that the Enforcement Committee has directed staff to continue working on the proposed language, including finding out more about the legislative intent behind Section 138, seeking input from the Board's Legal Counsel and Liaison Deputy Attorney General, and members of the Enforcement Committee.

b. Legislative

1. Report on the April 8, 1999, Committee Meeting

Mr. Hopwood reported on the April 8, 1999, Committee Meeting.

2. Legislation for 1999/00 Legislative Session, including but not limited to: AB 86 (McClintock), AB 751 (Gallegos), AB 1096 (Romero) AB 1234 (Shelley), AB 1312 (Machado), AB1341 (Granlund), AB xxx [retired license] (Assem. Comm. on Consumer Protection), SB 129 (Peace), SB 191 (Knight), SB 1216 (Hughes), SB 1306 (Sen. Comm. on Bus. & Prof.), and others

MOTION: Mr. Hopwood/Mr. Vu moved to take the following positions on the following bills:
AB 751 – Oppose Unless Amended
AB 1096 – Oppose Unless Amended
AB 1234 – Watch
AB 1312 – Watch

SB 129 – Watch
SB 1216 – Oppose Unless Amended
SB 1306 – Watch

VOTE: 10-0, Motion carried.

A handout regarding AB 1341 was distributed.

MOTION: Mr. Shambeck/Ms. Safran moved to accept the amendment to Business and Professions Code section 8730 as described in the handout.

Mr. Duke pointed out that exemptions are intended to be narrowly construed and that it is usually better to modify the definition to exclude a particular scope of work from the practice. He recommended that, rather than amend Section 8730 to provide for exemption, it would be better to amend Sections 6731.1 and 8726 to exclude accident/crime scene mapping from the definition of what constitutes engineering surveying and land surveying. Mr. Lazarian also suggested using the word “accident” rather than “collision.” Mr. Shambeck reminded the Board that any amendments to AB 1341 that the Board approves must still be submitted to the author of the bill and that the author can reject the amendments. After this further discussion, the motion was amended as follows:

AMENDED MOTION: Mr. Shambeck/Ms. Safran moved to seek an amendment to AB 1341 to amend Business and Professions Code sections 6731.1 and 8726 to exclude accident scene mapping from the definitions of the practices of engineering surveying and land surveying.

VOTE: 10-0, Motion carried.

Ms. Safran left at 3:45 p.m.

Mr. Shambeck advised the Board that, although the Legislative Committee had voted to recommend a “neutral” position on AB 1342, he now believes the Board should take an “oppose unless amended” position. He does not believe that the map checking requirements relating to Business and Professions Code section 8764(d) should be excluded from Section 8766, as this bill proposes to do. He does not believe this change would be beneficial to the consumers.

MOTION: Mr. Shambeck/Mr. Lazarian moved to take an oppose unless amended position on AB 1342.

VOTE: 9-0, Motion carried.

MOTION: Mr. Vu/Mr. Foley moved to approve the changes as suggested by the Legislative Committee to the language regarding the retired status which will be included in the Senate Business and Professions Committee Omnibus Bill.

VOTE: 9-0, Motion carried.

3. AB 1341 and Board Policy Resolution #98-02 – Surveying and Mapping of Accident Scenes

MOTION: Ms. Vu/Ms. Hoffman moved to revoke Board Policy Resolution #98-02.

VOTE: 8-1, Motion carried. Mr. Shambeck voted “nay.”

4. Sunset Process and Related Legislative Action
There was no action necessary on this item.

Mr. Shambeck left at 3:50 p.m.

d. Administrative

1. Report on the April 8, 1999, Committee Meeting
Mr. Vu reported on the April 8, 1999, Committee Meeting.

2. Cost Savings
There was no action taken on this item.

3. Administrative Update
Fund Condition
1998/1999 & 1999/2000 Budgets
Integrated Consumer Protection System (ICPS)
Applicant Tracking System
Outreach Efforts (Board Member, College/University, Enforcement)
There was no action necessary on these items.

Mr. Vu left the meeting at 3:55 p.m.

16. APPROVAL OF BOARD TRAVEL

MOTION: Mr. Lazarian/Mr. Foley moved to give Mr. Fairfield authority to travel to the U.S. Virgin Islands for the NCEES Board meeting

VOTE: 7-0, Motion carried.

17. OTHER ITEMS NOT REQUIRING BOARD ACTION

The next Board Meeting will be held on June 3 & 4, 1999, at the Ontario Airport Hilton.
There were no other items not requiring Board action.

18. ADJOURN

The meeting adjourned at 4:00 p.m.